***Carnevale v. JNI Corporation,* Case No. 04-55625**
Rawlinson, Circuit Judge, dissenting:

I respectfully dissent from that portion of the disposition vacating the district court's judgment and remanding for the district court to "permit Plaintiffs once again to amend their complaint (for the fourth time) or . . . state with particularity its reasons for declining to do so."

The presiding judge carefully and thoroughly not once, not twice, but three times sifted through the allegations made by the Plaintiffs. Each time, the judge explained at great length the deficiencies in the respective Complaint.

In its order dismissing the Second Amended Consolidated Complaint, the court warned the Plaintiffs that the third amendment would be their last. I do not read governing precedent as requiring a remand for the district court to state yet again that the Plaintiffs have failed "to cure deficiencies by amendments previously allowed." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

In *Foman*, the United States Supreme Court held that leave to amend should be granted "[i]n the absence of any *apparent or declared reason*–such as . . . repeated failure to cure deficiencies by amendments previously allowed . . ." *Id*. (emphasis added).

The reason for the district court's denial of further opportunities to amend is

apparent and dovetails with one of the examples delineated in *Foman*–repeated failure to cure deficiencies previously identified by the district court. *See id.*

Foman requires no formulaic recitation of factors. Rather if, as in this case, the reason for the denial is apparent, no abuse of discretion has occurred. *See id.* We are not required to speculate regarding the reason for the denial. The district court expressly stated its reason–Plaintiffs' repeated failure to cure identified deficiencies in the Complaint.

The majority disposition relies on Plaintiffs' representation that they could yet again amend their pleading "to address at least some of the deficiencies noted by the district court." However, in view of the fact that Plaintiffs have been unable to successfully plead their claims in four attempts, even in the face of a warning that no other opportunities would be provided, I am satisfied that the Plaintiffs cannot salvage their complaint. Indeed, at oral argument counsel for Plaintiffs conceded that they could provide no additional details regarding the analysts' predictions, which formed the basis for the allegations in the Complaints. This concession renders futile any further attempts to amend the Complaint. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (recognizing that dismissal with prejudice is appropriate where it is clear "that the complaint could not be saved by amendment.") (citation omitted).

Because the district court's reasoning is apparent and is consistent with *Foman*, no abuse of discretion occurred. Rather than remanding this case, I would affirm the district court's denial of further leave to amend.